
**Economic Development,
Agriculture & Trade Committee**

ESB 5962

Brief Description: Concerning customary agricultural practices.

Sponsors: Senators Haugen, Schoesler, Rasmussen, Morton, Shin and Delvin.

Brief Summary of Engrossed Bill

- Authorizes awards of legal defense costs and exemplary damages to prevailing farmers in nuisance actions under certain conditions.
- Requires property sellers within one mile of farms to disclose their existence to buyers.
- Exempts fugitive dust from certain state Clean Air Act requirements.

Hearing Date: 3/25/05

Staff: Caroleen Dineen (786-7156).

Background:

Nuisance actions. A nuisance on real property is generally described as an unreasonable or unlawful use that results in annoyance, discomfort, inconvenience, or damage to another person or to the public. Under Washington law nuisances on real property are classified as either private nuisances (which affect an individual's health, safety, or comfort) or public nuisances (which affect the rights of an entire community or neighborhood). Nuisances may be addressed through government regulation or civil suits, and certain nuisances are classified as crimes.

A nuisance exception exists for agricultural activities conducted on farmland that are consistent with good agricultural practices and that were established prior to surrounding nonagricultural activities. Agricultural activity is defined for these purposes as conditions or activities occurring on a farm in connection with commercial production of farm products. The exception includes conditions and activities such as noise, odor, dust, fumes, machinery and irrigation pump operation, seed and fertilizer application, and other farming activities. When the statutory conditions are satisfied, the agricultural activities are presumed to be reasonable and are deemed not to constitute a nuisance unless the activity has a substantial adverse effect on public health and safety.

Real property transfer disclosure statements. With certain exceptions and under specified circumstances, Washington law requires sellers of residential real property to provide a buyer with a transfer disclosure statement. The statute specifies the format and questions that the seller must answer. The form includes a statement that disclosure is being made concerning the condition of the property and is provided based on the seller's actual knowledge of the property's condition at the time the form is completed. Required disclosures pertain to real property conditions such as title, water, sewer/septic system, structural conditions, systems and fixtures, legal restrictions, and other conditions.

Clean Air Act requirements. The Washington Clean Air Act (the Act) regulates outdoor air pollution. The Act establishes a system of regional air pollution control authorities to implement federal and state air pollution control regulations. Air pollution control regulations address emission of air contaminants that injure health or unreasonably interfere with enjoyment of life and property. The Act directs the Department of Ecology (DOE) or the local air pollution control authorities to require permits for certain operating sources of air pollutants and allows these state and local agencies to impose registration requirements on sources of other air pollutants.

The Act exempts odors caused by agricultural activities consistent with good agricultural practices on agricultural land unless the odors have a substantial adverse effect on public health. Agricultural activity is defined for these purposes as the growing, raising, or production of horticultural or viticultural crops, berries, poultry, livestock, grain, mint, hay, and dairy products. Before issuing a notice of violation under the air pollution control statutes for an agricultural activity, the DOE or local air pollution control authority is required to consult with a recognized third-party expert in the activity to determine whether the activity is consistent with good agricultural practices.

Summary of Bill:

Nuisance actions. A farmer who prevails in a suit alleging that farm agricultural activity constitutes a nuisance or in a suit based on an unverified complaint may recover full reasonable costs and expenses of defending against the action as determined by the court. Costs and expenses in this context include actual damages (including lost revenue and replacement value of crops or livestock damaged or not harvested or sold because of the suit), attorneys' fees, and costs. A prevailing farmer in this type of suit also may be awarded exemplary damages if the court finds that the suit was initiated maliciously and without probable cause.

A court may order a person who makes an unverified complaint to pay the investigating agency its full investigative costs. For the purposes of this provision and the prevailing farmer award provisions, an "unverified complaint" is defined as a complaint in which agricultural activity on a farm is alleged to have violated specified laws, rules, or ordinances for which the investigating agency or a court determines: (1) that the farm is in conformity with the applicable laws, rules, or ordinances; and (2) the complaint was unfounded at the time it was initiated.

Real property transfer disclosure requirements. In addition to the other disclosures required by statute, a seller of real property located within one mile of a farm's or farm operation's property boundary must disclose the existence of the farm or farm operation. In this situation, the seller must make the following statement available to a buyer:

This notice is to inform prospective residents that the real property they are about to acquire lies within one mile of the property boundary of a farm. The farm may generate usual and ordinary noise, dust, odors, and other associated conditions, and these practices are protected by the Washington right to farm act.

Clean Air Act requirements. Fugitive dust caused by agricultural activity consistent with good agricultural practices on agricultural land is exempt from the Act's requirements. "Fugitive dust" is defined for purposes of this exemption to include particulate emissions made airborne by human activity and/or forces of wind that do not pass through a stack, chimney, vent, or other functionally equivalent opening. This exemption does not apply to facilities subject to the Act's registration requirements as specified in current administrative rules or to specified statutory permit requirements and new source requirements.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.